

JUDICIARY of the DUKE STUDENT GOVERNMENT

Erin Taylor v. Sabriyya Pate

Docket No. 17-001

Case No. 19

Filed on

March 7, 2017

Heard on

March 7, 2017

Decided on

March 7, 2017

Overview

On March 7, 2017, Erin Taylor filed a Petition with the Judiciary contesting the election procedures of a DSG Election. The election was held using an Instant Runoff Voting (IRV) system. The ballot required students to rank all candidates. The Petitioner argued that requiring students to rank all candidates violated the freedom of speech and the right to vote codified in Sections 3 and 6 respectively of Article IX of the Constitution. An emergency hearing was granted that evening to hear the case. The Petitioner initially requested that the ongoing election be suspended and restarted with a partial-ranking system. However, she amended her Petition to ask that the upcoming DSG elections (approaching in the near future) choose a permissible system. DSG argued that they had investigated different voting systems and that the system implemented for the election was optimal.

Parties

Parties of the Petitioner

Erin Taylor, Petitioner

Dana Raphael, Advocate

Parties of the Respondent

Sabriyya Pate, Respondent, DSG Attorney General

Ilana Weisman, Arguing on behalf of DSG, DSG Executive Vice President

Held

The IRV system as presented is unconstitutional. The upcoming elections should not use this system.

Chief Justice Devavrat V. Dabke delivered the opinion for a unanimous Judiciary.

OPINION of the COURT

Delivered by
Chief Justice Devavrat V. Dabke

Joined by
Associate Chief Justice J. Ross Winston
Associate Justice Dean Ischiropoulos
Associate Justice Barak Biblin
Associate Justice Analese Bridges
Associate Justice Michael Brunetti

Note: when the case was filed, heard, and decided, the Judiciary only had six sitting Justices.

Facts

An election for the DSG President and DSG Executive Vice President (EVP) for the 2017–2018 academic year was held from noon on March 7, 2017 to noon on March 8, 2017. Sabriyya Pate was the Attorney General supervising the election. The election was held through DukeGroups, which is Duke’s instance of software produced by CollegiateLink.

The ballot had two “required” matters. First, to rank the three candidates for DSG President (Jackson Dellinger, Will Hardee, and Riyanka Ganguly). Second, to either vote for Kushal Kadakia as Executive Vice President, or to vote “no confidence.” For both matters, a notice was written that asked students who wished to post a write-in candidate to email the Attorney General.

Finally, unless all three candidates for DSG President were ranked and unless a decision was made between voting for Kadakia or “no confidence,” the voting system did not allow the ballot to be submitted.

DSG argued that the implemented system was provided in conjunction withUCAE and the Duke Administration. They alleged technical limitations that prevented them from using IRV with partial rankings.

Questions Raised

The principal question is: does the Constitution require an IRV system to allow for a partial ranking of candidates? However, we can divide this into three more specific questions:

1. Does requiring a full ranking of candidates in an IRV system constitute impermissible compelled expression under Section 3 of the Bill of Rights (Article IX of the Constitution)?
2. Does requiring a full ranking of candidates in an IRV system constitute impermissible interference with the right to vote articulated in Section 6 of the Bill of Rights?
3. If either question one or question two are answered affirmatively, do technical limitations in the voting system given to DSG permit the infringements articulated in questions one and two?

DECISION

Free Expression

The Constitution is unequivocal: “All students have the right to free expression. Duke Student Government shall not abridge the freedom of speech, the press, petition, or peaceable assembly or protest” (Article IX, §3).

The Petitioner wanted to express a preference for one candidate, Candidate A. However, she was required to also express a relative preference between Candidate B and Candidate C. Requiring this relative preference is a form of compelled expression, as the Petitioner would not have expressed an opinion between Candidate B and C if not forced to do so by the voting system.

In a more extreme case, suppose the DSG EVP portion of the ballot only permitted students to vote “no confidence.” Given that a student wanted to participate in the election, being forced to vote “no confidence” would also be compelled expression.

That being said, the voting system is private. Therefore, it may not be clear how voting falls within the domain of “expression.” However, because of the nature of the IRV system, there could be a substantial difference on the outcome between an election where students were required to rank all candidates, as opposed to a system where students could rank just some of the candidates.

For example, suppose Candidate A, the Petitioner's first preference, received the fewest first-preference votes and that the election produced only a plurality for Candidate B. Then, in the current system, if the Petitioner arbitrarily voted for Candidate B over Candidate C, her vote would have been allocated to Candidate B. It is sufficient that voting, though private, produces a substantial public effect—namely, choosing certain Officers of DSG—to say that voting constitutes “expression.”

Therefore, we have demonstrated that a). voting is expression and b). that requiring the expression of a preference between two candidates where none exists constitutes compelled expression. Since the Constitution requires that students have the right to “free expression” and that the Duke Student Government shall not abridge it, the IRV system requiring a full-ranking violates the Constitution. Therefore, we answer our first question affirmatively.

The Right to Vote

Next, we also consider alternatives to expressing a full ranking. The Petitioner could have chosen to simply not vote. This suggestion sounds offensive to democratic governance, but for completeness, we also present the legal grounds as to why this alternative is not acceptable. The Constitution stipulates that “No student shall be deprived of the right to vote” (Article IX, §6). Therefore, the choice of the Petitioner to abstain from voting, when she wanted to vote for Candidate A, plainly violates the text and spirit of the Constitution.

Having the choice between compelled expression or not voting is a wholly illegitimate choice. Indeed, this choice constitutes a form of coercion, as either option produces an unconstitutional result. Therefore, we can conclude that the IRV system as presented is unconstitutional.

It is important to note that we have only determined that forcing a student to not vote is unconstitutional. This result, along with our analysis under the freedom of expression, is sufficient to determine that the IRV system as presented is unconstitutional. Therefore, we need not directly address the second question, i.e. we need not determine if the IRV system with a full-ranking is a *prima facie* violation of the right to vote articulated in the Constitution.

Technical Limitations

First and foremost, the Judiciary remains unconvinced that a full-ranking system is the only technical option. For example, previous elections permitted a partial ranking using the same system (DukeGroups). Therefore, we need not directly address the third question, as we find it moot.

However, we will note that logistical ease generally cannot trump constitutional requirements. Certainly, it would be logistically easier if the current DSG President chose the next DSG President. But, we hold elections as required by the Constitution. Of course, there is also no requirement that the Government choose the most logistically difficult means of accomplishing its aims. However, these choices must satisfy the baseline requirement of being constitutional. Otherwise, why bother having a Constitution at all?

Conclusion

The IRV system as presented is unconstitutional. Future elections should not use this system. We urge DSG to choose a system for future elections that passes constitutional muster. We would also like to note that we are not prescribing any specific system. We simply judge the IRV system as presented as impermissible under the current Constitution.

It is so ordered.

Endnotes

We would like to address some procedural matters that came up during the hearing. The Chronicle had made a public motion to allow them to record the hearing (and stream the hearing live via Facebook). This motion passed and the Chronicle began their recording. However, later in the hearing, Associate Chief Justice Ross Winston moved to end the Chronicle's recording (and Facebook live stream) of the hearing. The motion passed, and thus the Chronicle was ordered to end their recording. The Chronicle objected, but eventually complied with the order.

We would like to note that hearings are typically open to the public. However, there may be situations that present themselves that require us to close a hearing. Additionally, even at hearings that are public, like the one we had in this case, we may or may not permit certain conduct, like a recording. Regardless of the normative reasons to keep hearings public or to allow video recordings, the comport and conduct at a hearing is at the discretion of the Judiciary.

Indeed, the Judiciary has the exclusive prerogative to determine the rules and procedures of its proceedings (confer Article V, §5, Clause d of the DSG Constitution). A hearing certainly falls under this category. Therefore, when the Judiciary takes an action, like upholding a motion on the procedure of the hearing, that motion enters force immediately. All parties, including the public who attend, must comply with these orders.